

Fort Belknap Indian Community



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Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and
to represent the Assiniboiné and the Gros Ventre
Tribes of the Fort Belknap Indian Reservation)

Gros Ventre and Assiniboiné Tribes of the Fort Belknap Indian Community Water Rights Settlement Bill: Executive Summary

August 26, 2013

In 1908, the United States Supreme Court recognized that the Gros Ventre and Assiniboiné Tribes had reserved their rights to the waters of the Milk River and its tributaries for use on the Fort Belknap Indian Reservation, created in 1888. The Supreme Court concluded that the 1888 Agreement between the Gros Ventre and Assiniboiné Tribes and the United States government implied a reservation of sufficient water rights for the Tribes to carry out the purposes for which the Reservation was created. The landmark decision of the Supreme Court created what is now known as the *Winters* Indian water rights doctrine. The Fort Belknap Indian Community's (FBIC) reserved water rights include, but are not limited to, historically irrigated lands, presently irrigated lands, future irrigable lands, and wetlands, as well as municipal, industrial, and livestock watering uses. The FBIC, therefore, has senior water rights that entitle it to Milk River water and its tributaries, as well as certain rights to water within the Reservation in the Peoples Creek Basin (including Duck Creek, South Fork of Peoples Creek, Little Peoples Creek, Jim Brown Creek, Lodge Pole Creek, Lone Tree Coulee, and Mud Creek), the Beaver Creek Basin (including Big Warm Creek and Little Warm Creek), and the Missouri River Basin.

However, the United States failed to protect the FBIC water rights, breaching its fiduciary duty to the FBIC. The FBIC, therefore, has legal claims against the United States that result from federal actions occurring over the period of more than a century that have had a significant and continuing adverse impact on the water rights of the FBIC. Instead of litigating its claims, however, in 1981 the FBIC Council passed Resolution No. 19-81 for the purpose of quantifying the Tribes' reserved water rights through negotiations and settlement with the State of Montana Reserved Water Rights Compact Commission and the federal government. One purpose of these negotiations has been the desire of all parties to avoid lengthy and costly litigation and to settle the FBIC water rights through Congressional passage of a Water Rights Settlement Act.

After nearly fifteen years of negotiations between the State of Montana, the FBIC Council, and the federal negotiating team, the terms of the F

Montana Water Rights Compact (Compact) were agreed to and, after conducting public meetings on the Reservation, the FBIC Council members approved the Compact in 2001 with passage of Resolution No. 17-2001. Subsequently, the Montana Legislature ratified the Compact. The Compact quantified the FBIC water rights and provided for water development and water management for the Fort Belknap Indian Reservation and other “trust” and “fee” lands. Since then, the FBIC Council has continued extensive negotiations with the Federal and State water rights negotiating teams in order to obtain Congressional approval of the Compact, to reach final resolution of the FBIC reserved water rights, and to settle all related damages from the Federal government’s past conduct.

The current FBIC Council, following in the footsteps of Council persons elected over the last twenty-five (25) years who have concluded it is in the best interests of the Tribes and Community to participate in negotiations for the quantification of water rights, now has a proposed Fort Belknap Indian Community Water Rights Settlement Bill, titled the “Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act of 2013.” On May 8, 2013, the FBIC Council passed Resolution No. 53-2013, approving the terms of the proposed Settlement Act and directing the President and Secretary of the FBIC Council to take such action as is necessary to submit the proposed FBIC Water Rights Settlement Bill for Congressional consideration and approval. This Executive Summary provides a review of the key elements of the proposed FBIC Water Rights Settlement Bill.

The Executive Summary is divided into the following eight (8) sections: (1) Tribal Water Rights; (2) Exchange and Transfer of Public Lands into Trust; (3) Development of a Viable Reservation Economy by the Planning, Design, and Construction of Facilities to Use Reservation Water; (4) Milk River Coordinating Committee and Mitigation of Impacts and Protection of Milk River Water Users; (5) Fort Belknap Indian Community Settlement Fund; (6) Regional Economic Impact; (7) Miscellaneous Provisions; and (8) Effective Date.

Tribal Water Rights

The members of each FBIC Council participating in the negotiation of Tribal Water Rights over the last twenty years have had the goal of ensuring that water claims are negotiated for (a) all beneficial uses; (b) all the surface water sources on the Reservation; (c) the most senior priority date in the Basin; and (d) full rights to groundwater on the Reservation. The proposed FBIC Water Rights Settlement Bill includes Congressional approval of the terms and conditions of the Compact, which establish the following rights related to the FBIC Tribal Water Rights.

1. Water to be used for irrigation can be used between March 1 and October 31 of each year. Other non-irrigation uses, such as watering livestock, domestic use, and water needed to support fish and wildlife populations on the Reservation are authorized for the entire year. Generally, the Tribes can divert water by any means from any point on the water source that lies within the boundaries of the Reservation, for use any place within the Reservation.
2. The Tribes have the right to divert up to 645 cubic feet per second of the United States’ share of the natural flow of the Milk River and its tributaries upstream from the diversion point on the Reservation.

3. Of the right to divert 645 cubic feet per second of the natural flow of the Milk River, up to 125 cubic feet per second may be diverted for direct use to a maximum of 10,524 irrigated acres within the Fort Belknap Indian Irrigation Project. This water right preserves the historic water use protected under the *Winters* doctrine. In addition, up to 520 cubic feet per second may be diverted for direct use or to off-stream storage, or both, for subsequent use for the following: use on an additional 19,930 present and future irrigated acres within the Milk River Basin 40J, and up to 4,000 acre-feet per year of use for non-irrigation purposes. The off-stream storage is for a maximum combined capacity up to 60,000 acre-feet.
4. The Tribes have the right to the entire surface water and groundwater that is hydrologically connected to surface water that remains in the Peoples Creek Basin within the Reservation, including the right to store Peoples Creek water, after satisfaction of certain water rights arising under State law. The right to use water in the Peoples Creek Basin includes the right to use water conveyed from the Missouri River Basin 40EJ. To assist in maintaining water in the Basin and/or live stream flow for whatever purposes, the State has agreed to build storage with a minimum capacity of 3,000 acre-feet in upper Peoples Creek.
5. The Tribes have the right to divert 8,024 acre-feet per year for irrigation of 2,241 acres from surface flow, or from groundwater that is hydrologically connected to the surface flow, within the Reservation in the Beaver Creek Basin. The Tribes have the right to develop or authorize the development of groundwater within the Reservation that is not hydrologically connected to surface water under certain conditions, including consideration of an adverse effect (which is defined as an actual interference with the reasonable exercise of a water right resulting in a material injury).
6. The Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the effective date of the Compact in the Reservation portion of the Missouri River Basin 40EJ.
7. The Tribes have water rights on trust and fee land off the Reservation that includes the right to divert up to 1,135 acre-feet per year (for the present and historic irrigation of 297 acres and future irrigation of 18 acres) in the Missouri Basin 40EJ, and up to 1,290 acre-feet per year for conveyance to the Peoples Creek Basin (with a priority date of July 24, 1893). The Tribes also have the right to develop surface and groundwater in Missouri Basin 40EJ and Peoples Creek on off-Reservation trust and fee land pursuant to State law.
8. The Tribes have the right to develop surface water for use by livestock from the Milk River and its tributaries within the Reservation, the Peoples Creek Basin (including Duck Creek, the South Fork of Peoples Creek, Little Peoples Creek, Jim Brown Creek, Lodge Pole Creek, Lone Tree Coulee, and Mud Creek), the Beaver Creek Basin (including Big Warm Creek and Little Warm Creek), and the Missouri River Basin. (Water for livestock cannot be obtained from a Perennial Stream). The maximum capacity of each impoundment pit must be less than 15 acre-feet, and the total amount impounded in each impoundment or pit must be less than 30 acre-feet per year. The cumulative storage capacity of stock impoundments may not exceed a storage capacity of fifteen acre-feet times the number of square miles of the source Basin located on the Reservation.

9. Generally, the priority date of the FBIC water rights on the Reservation in the Milk River Basin 40J, Peoples Creek Basin 40I, Beaver Creek Basin 40M, and the Missouri River Basin 40EJ is October 17, 1855.
10. The Tribes are entitled to 20,000 acre-feet per year of stored water in Lake Elwell without cost to the FBIC.
11. Additionally, the FBIC's 1/7 share to the Fresno Reservoir's total quantity of stored water under the 1946 Fresno Reservoir Agreement is protected in addition to other rights identified in the Compact.
12. The United States is required to hold the Tribal Water Rights in trust for the use and benefit of the FBIC and allottees.
13. The FBIC will create a Tribal Water Code that will regulate consumption of the Tribal Water Rights to provide for irrigation, domestic, commercial, municipal, industrial, cultural, recreational, and other uses, with a due process system for determining requests for the use of water on tribal, allotted, and fee lands.
14. The FBIC or a tribal farming enterprise or irrigation district approved by the FBIC Council may enter into leases or agreements of allotted land for the development of the FBIC Irrigation Project, or any other irrigation project on the Reservation in the Milk River and Peoples Creek Basins, with the proceeds from a lease or agreement distributed to each owner of land subject to the lease or agreement, in proportion to the interest owned by the owner.
15. The reservation of a right-of-way through individually-owned allotted lands for irrigation purposes is authorized, with compensation to be paid to the individual owners of such allotted lands.
16. The FBIC may temporarily transfer certain portions of the Tribal Water Rights for use off the Reservation within the Missouri River Basin, except as may be limited by the International Treaty, consistent with the conditions specified in the Compact.
17. The Secretaries of the United States Departments of the Interior and Energy are required to make Pick-Sloan Missouri River Basin Program pumping power available for not more than 27,000 net acres of FBIC project lands under irrigation.

Exchange and Transfer of Public Lands Into Trust

The proposed FBIC Water Rights Settlement Bill provides for the transfer of 58,549 acres of land to be held in trust by the United States for the FBIC. The land transfer provision contributes, in part, to the settlement of the FBIC water rights claims by satisfying a portion of the damages that the FBIC has against the United States through the transfer of land in lieu of monetary compensation. The lands to be transferred to the United States to be held in trust for the Fort Belknap Indian Community are valued at approximately \$50,000,000.

The land transfer includes the exchange of Federal land for designated State land that will be transferred for the FBIC and includes: (1) 20,296 acres of State land on the Reservation, and (2) 7,413 acres off the Reservation, for a total of 27,709 acres. The Settlement Bill excludes from any federal land transfer lands identified for disposal pursuant to a resource management plan developed under the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701 *et seq.*), such as T 21N, R32E, sections 1, 2, 11, or 12. A provision has been added to the Bill that the Secretary try to ensure that land to be exchanged under the land transfer section minimize the financial impact of the exchange on local governments.

Specific Federal lands have also been identified and designated to be transferred to the United States to be held in trust for the FBIC, consisting of 30,840 acres. This Federal land transfer includes land parcels currently owned by the Bureau of Land Management (24,746 acres, including 14,457 acres known as the Grinnell Lands); Department of Agriculture (3,519 acres of former trust land, judicially foreclosed on, and acquired by the Department); and the Bureau of Reclamation (2,575 acres of land known as the Dodson Lands).

The FBIC Water Rights Settlement Bill protects lands with valid, existing private rights from the federal land transfer, including lands subject to the General Mining Act of 1872, 30 U.S.C. § 21 *et seq.* It also places a restriction on the land transfer consisting of the condition that any road necessary for customary access to fee parcels or other private rights within the parcels shall be guaranteed access through easements at the cost and expense of fee owners. Additionally, any use of land, including grazing, pursuant to a valid lease, permit, or right-of-way that is in effect on the date of the land transfer shall remain in effect until the date of expiration of the lease, permit, or right-of-way (unless an earlier termination is requested). Any improvements upon the land constituting personal property shall remain the property of the lease, permit, or right-of-way holder.

With regard to the Dodson Land, a land transfer shall not occur unless and until a cooperative agreement has been negotiated among the Bureau of Reclamation, the Bureau of Indian Affairs, and the Fort Belknap Indian Community (1) to ensure that the Bureau of Reclamation and any successor in interest, including the Malta Irrigation District, shall retain adequate rights-of-way to operate and maintain, consistent with all applicable laws and any delivery contracts in effect on the date of enactment of this Act, the Milk River Project and facilities of the Milk River Project, including the Dodson Diversion Dam and the Dodson South Canal within the Dodson land; (2) to manage and implement the planning, design, and construction activities described in the Act; and (3) to agree on the uses to which the Fort Belknap Indian Community may put the land. The Dodson land transfer is also subject to (1) the right of ingress and egress by personnel of the Bureau of Reclamation, the Malta Irrigation District, and other authorized personnel for Milk River Project purposes; (2) all existing rights-of-way of record or in use for Milk River Project facilities for Milk River Project purposes, as determined by the Bureau of Reclamation, the Malta Irrigation District, and authorized personnel; and (3) the right of the Bureau of Reclamation and Malta Irrigation District to seep, flood, and overflow the transferred land for Milk River Project purposes and to prohibit the construction of permanent structures on the transferred lands, except as provided for in the cooperative agreement and to meet the requirements of the irrigation project.

The Grinnell lands are former Reservation lands that are sacred to the Tribes. When gold was discovered in the Little Rockies in the 1890s on the southern edge of the Fort Belknap Reservation, however, federal government representatives were successful in obtaining an agreement from the members of the Fort Belknap Indian Reservation to cede the Grinnell lands to the federal government. The FBIC Water Rights Settlement Bill provides for the transfer of a portion of the Grinnell Lands back to the FBIC. Under the jurisdiction of the FBIC, the 14,457 acres of Grinnell Lands transferred to the FBIC shall retain the right of non-tribal members to continue to have the same right of access to the Grinnell Lands as it exists today for the next twenty-five years, with permit fees, bag limits, and the other rights and privileges non-tribal members currently enjoy under the State's hunting and fishing laws and regulations. The Bill also provides non-tribal members an equivalent right of access for twenty-five years for recreational purposes that is identical to that they currently enjoy under the Bureau of Land Management public lands laws and regulations. The Bill provides that FBIC Tribal regulations will remain consistent with these particular State and Federal regulations during this time period.

The FBIC agrees to waive and release its claims against the United States on the date on which all of the land transfers in the FBIC Water Rights Settlement Bill are complete.

Development of a Viable Reservation Economy by Planning, Designing, and Constructing Facilities to Use FBIC Water Rights

The terms of the FBIC Water Rights Settlement Bill are intended to promote the development of a viable Reservation economy by providing for the planning, design, and construction of facilities to use the FBIC Water Rights.

First, the Secretary of the Interior shall provide assistance to the FBIC with the planning, design, construction, and/or expansion of the Fort Belknap water supply infrastructure, the Fort Belknap Indian Irrigation Rehabilitation Project, the restoration of historic irrigation projects within the interior of the Reservation, livestock water supply improvement, and wetlands rehabilitation. As part of this, the Secretary of the Interior is also directed to conduct one or more studies to determine the feasibility and design of a water supply and sewer treatment system for the FBIC, determine the environmental impact, and ensure environmental compliance in the development and construction of projects under the Bill. The Secretary may enter into cooperative agreements with the State and the FBIC to carry out all or a portion of one or more studies that are authorized.

Second, the Bill provides the FBIC a permanent allocation of 20,000 acre-feet per year of stored water from the water right of the Bureau of Reclamation in Lake Elwell (Tiber Reservoir). The stored water will be treated as a component of the Tribal Water Rights. The FBIC may use the allocated water for any purpose, including agricultural, municipal, commercial, industrial, mining, or recreational purposes, on or off the Reservation. The FBIC may also use, lease, contract, exchange, or enter into other agreements for the use of this stored water when use of the water occurs within the Missouri Basin and the agreement does not permanently alienate any water allocated to the Tribe.

Milk River Coordinating Committee and Mitigation of Impacts and Protection of Milk River Water Users

The FBIC has substantial potential for water development from the Milk River, Peoples Creek, and several smaller tributaries with its senior water rights. The FBIC Water Rights Settlement Bill includes a provision to ensure that the Fresno Reservoir is operated in accordance with the Fort Belknap Indian Community-Montana Water Rights Compact. The 1946 Fresno Reservoir Agreement guarantees the FBIC a 1/7 share to the total quantity of water impounded and stored in the Fresno Reservoir, which is to be available for use during each irrigation season from the waters of the Milk River and its tributaries.

Additionally, the FBIC Water Rights Settlement Bill recognizes a basin-wide Milk River Coordinating Committee, created by the Compact, and authorizes the Secretary of the Interior, acting through the Bureau of Reclamation, the Bureau of Indian Affairs, the United States Geological Survey, the United States Fish and Wildlife Service, and the Bureau of Land Management, to participate in the Milk River Coordinating Committee. The purpose of the Milk River Coordinating Committee is to improve the coordination of storage operations, to provide for the coordination of releases of water from storage within, or for the diversion to, the Milk River Basin, and to improve the management of diversions from the Milk River.

The FBIC Water Rights Settlement Bill provides for the appropriation of State and Federal funds to mitigate potential adverse effects on water users, in particular, related to the St. Mary Diversion Facilities, the Milk River Project, and the Upper Peoples Creek Dam and Reservoir, due to the development and use of the FBIC Tribal Water Rights, which is consistent with the agreement of the parties to the Compact. The State's contribution includes funding project grants for mitigation and watershed improvement activities (\$3,500,000), as well as State technical, modeling, and other services for purposes of identifying, supporting, and enhancing water use and management in the Milk River Basin (\$4,000,000 of in-kind State contributions). Finally, it requires the Secretary of the Interior to establish a trust account in the amount of \$21,140,000 for the State of Montana in order to carry out the mitigation and watershed improvement activities described in the Compact.

The FBIC Water Settlement Bill recognizes a water right mitigation agreement for Peoples Creek included in the Compact. The FBIC agrees to subordinate its senior priority water rights in Peoples Creek in exchange for the development of reservoir storage for the benefit of the FBIC in the Upper Peoples Creek Basin. In effect, the Tribal priority date in Peoples Creek Basin will be the date of the Compact, a date that is junior to existing non-Indian water users in the Peoples Creek Basin. The State of Montana has agreed to provide \$5,000,000 towards construction of the proposed Peoples Creek Reservoir.

Fort Belknap Indian Community Settlement Fund

The FBIC Water Rights Settlement Bill proposes the establishment of a Fort Belknap Indian Community Settlement Fund for the purpose of carrying out the activities identified in the Bill. The FBIC Council has identified \$524,900,000 of Federal funding for the Settlement Fund to satisfy, in part, its legal claims. It shall consist of four (4) accounts established in the Treasury

of the United States for expenditures by the FBIC as follows: (1) the Fort Belknap Indian Community Tribal Land and Water Rehabilitation, Modernization, and Expansion account; (2) the Fort Belknap Indian Community Water Resources and Water Rights Administration, Operation, and Maintenance account; (3) the Fort Belknap Indian Community Tribal Economic Development account; and (4) the Fort Belknap Indian Community Water and Wastewater Rehabilitation and Expansion account.

The proposed FBIC Water Rights Settlement Bill authorizes \$524,900,000 in appropriations for the FBIC from 2012 through 2020 for each of the four accounts, as follows:

1. The Fort Belknap Indian Community Tribal Land and Water Rehabilitation, Modernization, and Expansion Account—\$240,140,000: This account is established for activities related to exchanging, transferring, or acquiring land; rehabilitating or otherwise improving existing and historically irrigated land or projects; agricultural development and irrigation project expansion; cultural preservation; water resource development; and other land- and water-related projects.
2. The Fort Belknap Indian Community Water Resources and Water Rights Administration, Operation, and Maintenance Account—\$61,150,000: This account is established to pay the costs of administering the Tribal Water Rights and the annual operation and maintenance costs for the expanded irrigation projects.
3. The Fort Belknap Indian Community Tribal Economic Development Account—\$100,340,000: This account is established in order to pay the costs of economic development activities that the FBIC determines will further develop the Reservation economy of the FBIC.
4. The Fort Belknap Indian Community Water and Wastewater Rehabilitation and Expansion Account—\$123,280,000: This account is established to pay the costs of (a) a feasibility study and design of a water supply and sewer treatment system for the FBIC; (b) the planning, design, and construction of a domestic water supply system and related facilities for tribal communities; and (c) the planning, design, and construction of a wastewater treatment system and related facilities for tribal communities.

The funds for the four accounts in the Settlement Fund is in addition to the \$21,000,000 that is authorized in the Settlement Bill for appropriations to the State of Montana for a Mitigation Fund for Irrigation Projects in the Milk River Basin, mentioned in the previous section.

Finally, the FBIC Water Rights Settlement Bill provides that \$1,100,000 be appropriated for the Bureau of Reclamation that will be conducting activities related to planning, designing, and constructing infrastructure improvements (including access roads, bridges, and fencing) necessary to maximize the utility of the rights-of-way with respect to transferred land.

Regional Economic Impact

The FBIC Council is requesting a total of \$547,000,000 in funding. The FBIC Council anticipates that the settlement of the FBIC water rights will result in a significant and positive economic impact on local communities and the region. The Council of Economic Advisers recently issued a report titled "Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009." (Executive Office of the President, dated May 2009). Using historical experience, current modeling techniques, and a conservative approach, the Council of Economic Advisers reported that, as a simple rule, \$92,000 of government spending creates one job-year (or one job for one year). Using this rule of estimation, the proposed FBIC Indian Water Rights Settlement Act will create an approximate total of 5,946 job-years.

President Obama has shown a commitment to create jobs and improve the quality of life for Native American communities by strongly supporting Indian water rights settlements. Between 2010 and 2012, six Indian water rights settlements were achieved—an unprecedented number of Indian water rights settlements in that short period of time. A good portion of the jobs generated by the implementation of the settlements will be in Native American communities, and the benefits of the reliable and modern water infrastructure that these projects create will bring additional and lasting economic benefits to Indian Country. (See Mike L. Connor, Commissioner of Reclamation, Sept. 12, 2011, Making Progress in Indian Country, at www.whitehouse.gov).

Miscellaneous Provisions

The FBIC Water Rights Settlement Bill provides for the cancellation and elimination of any and all debt or liens against the allotments of land held by the FBIC and its allottee members due to construction and operation and maintenance assessments, which have been assessed against tribal and allotted lands within the Indian Irrigation Projects.

In return for recognition of the FBIC's Tribal Water Rights and other benefits provided by the Fort Belknap Indian Community-Montana Water Rights Compact and the proposed FBIC Water Rights Settlement Act, the Bill provides for the waiver and release of all claims for water rights within the State of Montana by the FBIC, on behalf of itself and its members (but not =FBIC members in their capacities as allottees), and the United States acting in its capacity as trustee for the FBIC (but not FBIC members in their capacities as allottees). It also provides for the waiver and release of all claims for water rights within the Reservation by the United States acting in its capacity as trustee for allottees. Finally, it provides for the waiver and release of all claims for water rights within the State that the FBIC may have as against the United States acting in its capacity as trustee for the FBIC, as well as all claims for damages, losses, or injuries to water, water rights, land, or natural resources due to the loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to the loss of water or water rights); claims relating to interference with, diversion or taking of water, or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure within the State of Montana.

Nevertheless, the FBIC and the United States, acting in its capacity as trustee for the FBIC, reserve certain rights, including the retention of (1) all claims that may be necessary to

enforce the Compact, the Final Court Decree, or the Settlement Act; (2) all rights to use and protect water rights acquired after the date of enactment of the Act; (3) all claims relating to activities affecting the quality of water; and (4) all claims related to the enforcement of any Federal, State, or Tribal law to protect the environment or seek damages related to water quality problems caused by mining activities in the Little Rocky Mountains or the depletion in surface flows and groundwater on the southern end of the Reservation. Further, the Fort Belknap Indian Community retains the right to enforce its own laws with regard to environmental protections.

Effective Date

Several actions must be taken to effect the enactment of the provisions of the 'proposed FBIC Water Rights Settlement Bill: (1) Congress must authorize, ratify, and confirm the Fort Belknap Indian Community-Montana Water Rights Compact with passage of the FBIC Water Rights Settlement Act; (2) the members of the FBIC must approve the Fort Belknap Indian Community-Montana Water Rights Compact; (3) the Montana Water court must approve the decree agreed to by the United States, the FBIC, and the State of Montana in the Fort Belknap Indian Community-Montana Water Rights Compact; and (4) a United States district court of jurisdiction must enter a consent decree as requested by the Parties.